

223.1

STATE BAR OF CALIFORNIA

JUNE 1974

ASSEMBLYMEN

CHAIRMAN
VINCENT THOMAS
SIXTY-EIGHTH DISTRICT
WILLIE L. BROWN, JR.
EIGHTEENTH DISTRICT
EUGENE A. CHAPPIE
SIXTH DISTRICT
MIKE CULLEN
FORTY-FOURTH DISTRICT

Joint Legislative Audit Committee

GOVERNMENT CODE: SECTIONS 10500-10504

California Legislature

VINCENT THOMAS
CHAIRMAN

ROOM 4126, STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
(916) 445-7906

TONY BOLOBNOW, COORDINATOR
(916) 445-7907

EVE OSTOJA, OFFICE MANAGER
(916) 445-7908

SENATORS

VICE CHAIRMAN
RANDOLPH COLLIER
FIRST DISTRICT
CLARE BERRYHILL
THIRD DISTRICT
GEORGE DEUKMEJIAN
THIRTY-SEVENTH DISTRICT
GEORGE N. ZENOVICH
SIXTEENTH DISTRICT

July 2, 1974

The Honorable Speaker of the Assembly
The Honorable President of the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members:

Transmitted herewith is the Auditor General's report pertaining to the operations of the State Bar of California.

State Bar membership is compulsory for all attorneys admitted to practice in California. As of May 20, 1974, there were 40,700 active members. The primary function of the State Bar is to serve as the professional regulatory agency for the legal profession in California. The State Bar also represents the interests of the legal profession before the Legislature, and recommends changes in the legal system and administration of justice.

The State Bar has requested the Legislature for authority to increase the effective bar membership fee for attorneys in practice five years or over from \$100 to a maximum of \$145 as of January 1, 1976. However, the State Bar has projected a gradual increase in membership fees wherein the full amount of the authorized increase would not take place until after 1980. Similar fee increases have been requested for attorneys in practice for less than five years.

The purpose of the fee increase is to finance additional staff members for the State Bar as well as to finance anticipated inflationary cost increases. The permanent State Bar staff of 153 as of June 1, 1974 would be increased to 222 by 1980.

The Honorable Members of the Legislature
of California
July 2, 1974
Page 2

The State Bar has not developed specific workload statistics and standards needed to evaluate its current operations and to project its future needs. No specific workload analysis to justify either the existing staff or the projected staff increases has been prepared. Working papers to specifically document how such staffing projections were determined were requested but not provided to the Auditor General.

The Auditor General concludes that until the State Bar formulates specific workload statistics and standards to justify both existing staff levels as well as proposed staff increases, an increase in the membership fees is at this time not appropriate.

The Auditor General has recommended that the Legislature disapprove the request of the State Bar of California to increase fees until the State Bar provides a justification for staff increases in a specific written analysis of staffing needs based on workload statistics and standards.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Vincent Thomas", with a stylized, cursive script.

VINCENT THOMAS, Chairman
Joint Legislative Audit Committee

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
REVENUE AND EXPENDITURE DATA	5
FINDING	
The State Bar Has Not Developed Specific Workload Statistics And Standards Needed to Evaluate Its Current Operations And To Project Its Future Needs	11
COMMENTS OF THE SECRETARY OF THE STATE BAR	16
APPENDIXES	
A - State Bar of California - Summary of Expenditure Projections Contained In "Program for the Public And the Profession 1974-1980"	17
B - Summary of Disciplinary Procedures	18

INTRODUCTION

In response to a legislative request, we have reviewed the operations and expenditures of the State Bar of California.

State Bar membership is compulsory for all attorneys admitted to practice in California. As of May 20, 1974, there were 40,700 active members.

The State Bar is organized as part of the Judicial Branch of government and is subject to the authority of the State Supreme Court in certain matters. Its primary function is to serve as the professional regulatory agency for the legal profession in California. As such it handles the examination and licensing of attorneys. It also investigates attorneys accused of professional misconduct and in appropriate cases can either publicly or privately censure the attorney or recommend suspension or disbarment to the State Supreme Court.

Other activities of the State Bar in addition to its regulatory function include:

- Representing the interests of the legal profession before the Legislature and to the public
- Investigating for and making recommendations to the Governor concerning judicial appointments

- Studying and making recommendations to the Legislature for improving the state's legal system and administration of justice
- Publishing bimonthly "California State Bar Journal" which contains articles of interest to the legal profession, and a monthly "Reports" which contains current news relating to the legal profession
- Providing general guidance to a self-supporting Continuing Education of the Bar program administered and operated by the University of California for the legal profession in California
- Administering a client security fund from which the State Bar may at its discretion pay up to \$25,000 per client to members' clients who have suffered pecuniary loss because of the dishonesty of the member.

The State Bar was established by Article 6, Section 9 of the State Constitution which provides that:

"The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge of a court of record."

The powers, duties and form of organization of the State Bar are set forth in Section 6000 et seq. of the Business and Professions Code, which also sets forth:

- The requirements for admission to the practice of law
- The authority of the State Bar's board of governors and the courts in administering discipline, and
- Certain acts relating to the practice of law for which criminal sanctions apply or for which an attorney may be subject to professional discipline.

Pursuant to its statutory rule making authority, the board of governors of the State Bar has prescribed additional requirements for admission to the legal profession and additional regulations regarding the conduct of attorneys. Regulations regarding the conduct of attorneys are submitted to the Supreme Court for approval.

The State Bar is governed by a 15-member board of governors elected from various districts in the state by the active bar members maintaining their law office in the particular district. Five governors are elected each year; the term of office is three years. The board of governors selects each year from among its members a president, four vice presidents and a treasurer. The board also appoints a secretary who serves as the chief administrative officer of the State Bar.

As of June 1, 1974, the State Bar staff totaled 187, made up of a permanent staff of 153 (including the State Bar secretary) and 34 part-time employees. The permanent staff is as follows:

Table 1

State Bar of California
Number of Permanent Staff By Location
As of June 1, 1974

<u>Location</u>	<u>Total</u>	<u>Non-Attorneys</u>	<u>Attorneys</u>
San Francisco	89	61	28
Los Angeles	59	43	16
Sacramento	<u>5</u>	<u>2</u>	<u>3</u>
Total	<u>153</u>	<u>106</u>	<u>47</u>

In addition to this staff, the State Bar also relies on volunteer help from members who serve on various committees.

REVENUE AND EXPENDITURE DATA

The State Bar, which does not require support from general tax revenues, is financed primarily through membership fees and examination fees. The membership fee is \$100 per year for attorneys in practice five or more years with lower fees charged newly admitted members and inactive members. The \$100 consists of an \$80 basic fee, a \$10 building fund fee and a \$10 client security fund fee.

The examination fee is currently \$100 for California applicants taking the bar examination for the first time and \$70 for each subsequent examination, with higher amounts charged out-of-state law graduates and out-of-state attorneys applying for admission to the California bar.

Membership fees currently are at the maximum set by law except for the inactive members' fee which is \$15 with a statutory maximum of \$20. Bar examination fees are authorized by statute to be set at the amount needed to pay for the cost of the examination process.

Total revenues of the State Bar during calendar year 1973 were \$4,890,589. A breakdown of the 1973 calendar year actual revenues compared with 1974 estimated revenue is as follows:

Table 2

State Bar of California
1973 Calendar Year Actual
And 1974 Estimated Revenue

	<u>1973 Actual Revenue</u>		<u>1974</u>
	<u>Amount</u>	<u>Percent Of</u>	<u>Estimated</u>
<u>General Fund</u>		<u>General Fund</u>	<u>Revenue</u>
Net Membership Fees	\$2,567,327	66.0	\$2,910,295
Committee on Bar Examiners	944,109	24.2	1,092,300
Board of Legal Speciali- zation	210,601	5.4	165,000
Other, including interest	<u>172,829</u>	<u>4.4</u>	<u>180,000</u>
Subtotal	<u>3,894,866</u>	<u>100.0</u>	<u>4,347,595</u>
<u>Other Funds</u>			
Building Fund	421,319		410,250
Client Security Fund	16,483		410,250
"Law in a Free Society"	306,731		*
Pilot Program in Legal Specialization	46,337		*
Prepaid Legal Services	<u>204,853</u>		<u>*</u>
Subtotal	<u>995,723</u>		<u>820,500</u>
Total	<u>\$4,890,589</u>		<u>\$5,168,095</u>

*Not estimated.

Total expenditures of the State Bar during the 1973 calendar year were \$3,631,572. A breakdown of the 1973 calendar year actual expenditures compared with the 1974 calendar year budgeted expenditures is as follows:

Table 3

State Bar of California
1973 Calendar Year Actual,
And 1974 Budgeted Expenditures

	1973 Actual <u>Expenditures</u>	1974 Budgeted <u>Expenditures</u>
General Fund:		
Management and Coordination	\$ 509,577	\$ 591,000
General Counsel and Discipline	900,386	1,104,350
Bar Examiners	816,758	999,350
Public Affairs	258,169	271,500
Committee Support	153,615	216,800
Legislative Program	133,899	155,800
Legal Services	78,335	107,600
Conference of Delegates	79,532	87,500
Unauthorized Practice of Law	72,835	106,500
Legal Specialization	41,135	156,000
Office Supplies	106,944	120,000
Postage, Telephone and Telegraph	104,058	133,800
Rent	6,050	3,300
Land and Building Maintenance	45,258	63,600
Contract Printing	9,289	7,000
Miscellaneous	<u>112,338</u>	<u>78,900</u>
Total General Fund	<u>3,428,178</u>	<u>\$4,203,000</u>
Other Funds:		
"Law in a Free Society"	139,277	
Pilot Program in Legal Specialization	<u>64,117</u>	
Total Expenditures	<u>\$3,631,572</u>	

Office of the Auditor General

Expenditure estimates for other than the General Fund are not available. Funds other than the General Fund are not budgeted. Actual expenditures for 1973 exclude \$994,532 from the building fund, \$131,515 disbursed to California Lawyers' Service (a program under which the State Bar acts as a grant clearing house), and the return of unused prior year grant funds of \$25,386 under the "Law in a Free Society" program.

In the preceding table, expenditures were shown in the categories used by the State Bar in its accounting records and for its financial statements. The State Bar has based its expense categories in some cases on the organizational unit of the State Bar's staff which incurred the expense such as, for example, "Management and Coordination", "General Counsel and Discipline". In other cases the expense categories are based on the character of the expense, such as, for example, "Office Supplies" and "Rent".

The following table was prepared to show approximately the use of the basic membership fees, (membership fee less building fund and client security fund assessments) which support General Fund expenditures. In preparing the table we have grouped the expenditures into five work activities performed by the State Bar and made allocations where necessary. Expenditures for bar examinations have been excluded. Costs incurred in administering the client security fund were estimated by the staff of the State Bar to be less than \$10,500 during 1973 and have not been broken out separately. Also costs of the State Bar's advisory role on judicial appointments and its guidance of the self-supporting Continuing Education of the Bar program were negligible and have not been broken out separately.

Table 4

State Bar of California
Actual 1973 Calendar Year
General Fund Expenditures
Exclusive of Bar Examiners' Expenditures

	<u>Amount</u>		<u>Percent Of Total</u>
I. General Administration			
Management and Coordination	\$ <u>562,945</u>	\$ 562,945	22.5
II. Regulatory			
General Counsel and Discipline	1,030,094		
Unauthorized Practice of Law	<u>84,179</u>	1,114,273	44.6
III. Advocacy (Representing the interests of the legal profession before the Legislature, and studying and pro- posing changes in the legal system and administration of justice.)			
Committee Support	176,970		
Legislative Program	131,582		
Conference of Delegates	<u>91,876</u>	400,428	16.0
IV. Publications and Information			
Public Affairs	<u>285,204</u>	285,204	11.4
V. Other			
Legal Services	90,346		
Legal Specialization	<u>47,474</u>	<u>137,820</u>	<u>5.5</u>
Total		<u>\$2,500,670</u>	<u>100.0</u>

The above table shows estimated expenditures in each of the organizational categories supported by the basic membership fees. The Bar Examiners' category (Table 3 on page 7) amounting to \$816,758 is fully supported by

examination fees, and is excluded from Table 4 above. Further, an allocation to the Bar Examiners' category amounting to \$110,750 was also excluded in preparing Table 4, making the total exclusion for bar examiners \$927,508. This total exclusion of \$927,508 when added to Table 4 General Fund expenditures of \$2,500,670 equals total General Fund expenditures of \$3,428,178 as shown on Table 3.

FINDING

THE STATE BAR HAS NOT DEVELOPED
SPECIFIC WORKLOAD STATISTICS AND
STANDARDS NEEDED TO EVALUATE ITS
CURRENT OPERATIONS AND TO PROJECT
ITS FUTURE NEEDS

The State Bar has requested the Legislature for authority to increase the bar membership fee for attorneys in practice five years and over from \$100 per year (\$80 basic fee plus \$10 building fund fee plus \$10 client security fund fee) to a maximum of \$145 per year (\$125 basic fee plus \$10 building fund fee plus \$10 client security fund fee) effective January 1, 1976. Similar fee increases have been requested for attorneys in practice for less than five years. The purpose of the fee increase is to finance additional staff members and to meet anticipated inflationary increases in costs. About half of the proposed fee increase is for additional staff and related costs and half is for an anticipated five percent per year inflationary increase in price levels. Permanent staff of 153 as of June 1, 1974 would be increased to 222 by 1980.

The State Bar has not formulated specific workload statistics and standards to demonstrate the need for the projected staff level on which its request for authority to increase fees is based. Further a specific written analysis to document the current staff level has not been made. The State Bar has set forth its desired increase in staff level together with related projected expenditure levels through 1980, (see Appendix A on page 17 of this report for a summary) but in doing so it has not determined specifically why

the additional staff is needed, nor has it prepared a specific workload analysis to justify such an increase. Working papers to specifically document how such staffing projections were determined were requested but not provided.

Workload statistics refer to the amount of work accomplished in a given period of time. Workload standards refer to the amount of work, on the average, that should be accomplished in a given period of time.

Current State Bar fees are substantially higher than those charged by other professional regulatory agencies. For example, the license fee charged physicians and surgeons is currently \$20 every two years and the fee charged certified public accountants is currently \$30 every two years. We recognize that different professional regulatory agencies have different needs. However, in view of the large differences between fees charged attorneys and the fees charged other professionals, it would, in our judgment, be appropriate for the State Bar to formulate specific workload statistics and standards in order to carefully evaluate its current operational efficiency and effectiveness prior to requesting a fee increase. Such an evaluation has not been made.

The following table shows the State Bar's projected basic membership fees, membership and expenditures, exclusive of bar examination expenditures, from calendar year 1974 through 1985.

Table 5

State Bar of California
 Projected Basic Membership Fees,
 Membership and Expenditures, Exclusive
 Of Bar Examination Expenditures For
Calendar Year 1974 Through 1985

<u>Year</u>	<u>Projected Basic Membership Fee*</u>	<u>Projected Membership</u>	<u>Projected Expenditures</u>
1974	\$ 80**	40,500	\$3,184,000
1975	80	42,700	3,523,000
1976	87	44,800	3,944,000
1977	97	46,800	4,363,000
1978	102	48,900	4,778,000
1979	107	58,000	5,189,000
1980	113	52,700	5,636,000
1981	119	54,400	6,087,000
1982	127	56,100	6,667,000
1983	135	57,600	7,263,000
1984	144	58,900	7,885,000
1985	145	60,200	8,095,000

*Excludes building fund and client security fund fees.

**Actual fee.

Overall, the State Bar's projected increases in expenditures, after adjusting for inflation, closely correspond to its estimated increase in membership. In discussions with the State Bar staff, they have referred to membership as perhaps the best measure of their workload. However, many of the State Bar's costs, such as management and coordination, are relatively fixed and would be expected to increase only slightly even with large increases in membership.

As previously noted, the State Bar has not developed specific workload statistics and standards that relate to the work being done. An activity where workload statistics and standards are particularly needed is in the area of professional discipline.

Discipline costs make up the largest single item in the State Bar budget. Costs incurred by the State Bar for processing disciplinary cases are approximately those which it includes under the category of "General Counsel and Discipline". During 1973, State Bar expenditures for General Counsel and Discipline were \$900,386, or about \$23 per active member. Budgeted expenditures for 1974 were \$1,104,350, or about \$27 per active member. In data prepared to support its proposed fee increase, the State Bar estimates that in 1980 expenditures for General Counsel and Discipline will be \$2,266,000, or about 35 percent of the total increase in expenditures proposed between 1974 and 1980. The State Bar's procedures for processing a disciplinary case are described in Appendix B of this report.

The procedures used by the State Bar in investigating attorneys accused of misconduct and determining whether to reprimand the attorney or whether to recommend to the Supreme Court that the attorney be suspended or disbarred are unusually complex when compared to, for example, felony criminal procedures. Each of the steps in felony criminal procedure has its parallel in the bar association's procedures. Also, while most felony convictions are not appealed to the Court of Appeal, the comparable step in the State Bar's procedures involves automatic appeal. Also, the bar association can only recommend suspension or disbarment; and, if such recommendation is made, the bar then presents its case in a hearing before the State Supreme Court.

The State Bar, while presently making some analysis, has not made a thorough study of these procedures to determine if they could be simplified and if so what the effect in disciplinary cost would be.

We conclude that until the State Bar formulates specific workload statistics and standards to justify both current staff levels as well as proposed staff increases, an increase in the membership fees is at this time not appropriate.

RECOMMENDATION

We recommend that the Legislature disapprove the request of the State Bar of California to increase fees until the State Bar provides a justification for staff increases in a specific written analysis of staffing needs based on workload statistics and standards.

COMMENTS OF THE SECRETARY OF THE STATE BAR

1. Consideration was given to a variety of factors when the projected State Bar staffing levels and related expenditures were determined. However, the working papers to support such projections may have been discarded. Membership and complaint statistics are available and were heavily relied on in formulating the projections.
2. While workload standards have not been formulated, workload statistics are definitely available.
3. Studies are presently being made to streamline the disciplinary process. While disciplinary procedures are not too complex, they do contain too many levels of review.
4. Attorneys receive a substantial amount of services from the State Bar. In other professions, voluntary professional regulatory agencies provide significant services in addition to the services provided by the agency itself.



Harvey M. Rose
Auditor General

June 19, 1974

Staff: John McConnell
Richard Porter
Michael McGarity
David Tacy

State Bar of California
Summary of Expenditure Projections Contained In^{1/}
"Program for the Public And
The Profession 1974-1980"

<u>Expenditure Category</u>	1974 Budgeted Expenditures	1980	
		<u>Cost Projections</u>	<u>Staff Projections</u>
Discipline	\$1,104,350	\$2,266,000	92
Unauthorized Practice of Law	106,500	258,000	10
Legal Specialization	156,000	245,000	5
Legal Services	107,600	146,000	6
Conference of Delegates	87,500	96,000	2
Committee Support	216,800	557,000	18
Legislative Activities	155,800	170,000	6
Bar Examiners	999,350	1,902,000	30
Public Affairs	271,500	453,000	7
Management and Coordination	591,000	821,000	44
Miscellaneous	406,600	520,000	-
Professional Competence	-	77,000	2
Certified Attorney Assistants	-	209,000	5
Client Security Fund	-	28,000	2
Total	<u>\$4,203,000</u>	<u>\$7,748,000</u> ^{2/}	<u>229</u> ^{2/}

^{1/} "Program for the Public and the Profession 1974-1980" is a booklet prepared by the staff of the State Bar of California, for presentation to the Legislature in support of their request for membership fee increase. The information in the above table was extracted from the narrative of the booklet.

^{2/} The above table shows 1980 projected costs of \$7,748,000 and staff requirements of 229 identified in the narrative of the booklet. Expenditure of \$7,538,000 and staff requirements of 222 were shown in the booklet's summary.

SUMMARY OF DISCIPLINARY PROCEDURES

Any citizen may file a complaint against a member of the State Bar by detailing specific allegations, which are submitted to the State Bar at either its San Francisco or Los Angeles office for investigation. The accusation and pertinent information are given to a staff attorney who investigates the substance of the charges. In the process, he may contact the accused attorney for his reply to the charges. At the conclusion of this investigation, matters that warrant further action and which cannot be concluded appropriately by a warning letter are referred to a Preliminary Investigation Committee (PIC). (If a complainant is unsatisfied with the dismissal of charges at any level of the procedure, he may seek independent review by the State Supreme Court.)

PICs are one-man juries of State Bar members authorized by the board of governors to investigate charges made against members in the various regions of the state. The PIC conducts a hearing to determine whether probable cause exists to initiate proceedings before a formal Trial Committee. The State Bar's staff attorney assigned to the case or a volunteer member of the State Bar acts as prosecutor at the hearing. If it is determined that disciplinary action is not warranted, the PIC terminates the matter with a brief written explanation. If discipline is warranted, the PIC issues formal charges to be served against the accused attorney and the matter is referred to a Trial Committee in the same region.

Trial Committees are composed of a single member, or at the option of the accused, three members who are also chosen by the board of governors from State Bar members in various regions in the state. The Trial Committee acts as a superior court to hear State Bar disciplinary matters. The prosecutor and defendant present their entire cases, using the rules of evidence provided for civil proceedings. If discipline is determined to be warranted, the trial record and the Trial Committee's findings and recommendations are transmitted to the statewide Disciplinary Board. Unlike a superior court, the Trial Committee may not render a binding decision against a defendant.

The Disciplinary Board reviews the Trial Committee's report and the hearing record and conducts its own hearing in much the same manner as an appellate court. The prosecution and defense again present their cases, this time using only written briefs and oral arguments. If the Disciplinary Board determines that public or private reprimand is appropriate, the case will be closed unless the defendant appeals the decision to the State Supreme Court. If the Disciplinary Board finds that suspension or disbarment is appropriate, the case is automatically referred to the Supreme Court, which alone may suspend or disbar a member of the State Bar.

Like the Disciplinary Board, the Supreme Court reviews the records of prior proceedings and accepts only oral arguments and written briefs of prior evidence. However, the State Bar's prosecution is represented by the State Bar's General Counsel, which takes over the case from the attorney who had prosecuted it previously. The Supreme Court's decision is final.